

**City of San Jose
Request for Qualifications**

Notice to Interested Consultants

April 17, 2009

The City of San Jose invites Statement of Qualifications submittals for:

JOB ORDER CONTRACTING CONSULTANT SERVICES

The City of San Jose seeks Job Order Contracting Consulting Services firms to submit a Statement of Qualification (SOQ) demonstrating relevant experience and ability to provide Job Order Contracting services.

The Request for Qualifications package may be obtained on the City's Bid Hotline Information website, <http://cpms.sanjoseca.gov/pub/BidHotline/rfp/>

For questions please contact:

City of San Jose
Attn: Wayne Hoskins
200 E. Santa Clara St. 6th Floor
San Jose, CA 95113-1905

e-mail: wayne.hoskins@sanjoseca.gov

FILING OF SUBMITTALS

A sealed SOQ package must be received by the City of San Jose, on or before

May 12, 2009 at 5:00 PM Pacific Standard Time (PST)

It is the sole responsibility of the Consultant to see that the submittal is received before the stated deadline. Failure to provide the information requested herein prior to the time and date specified above may preclude participation in the selection process.

END OF NOTICE

REQUEST FOR QUALIFICATION STATEMENT

JOB ORDER CONTRACTING CONSULTANT SERVICES

**FOR THE
CITY OF SAN JOSE**

DUE DATE: 5:00 PM Pacific Standard Time (PST), May 12, 2009

City of San Jose
Attn: Wayne Hoskins
200 E. Santa Clara St., 6th Floor
San Jose, CA 95113-1905

TO: JOB ORDER CONTRACTING CONSULTANTS

RE: REQUEST FOR QUALIFICATIONS (RFQ)
JOB ORDER CONTRACTING CONSULTANT SERVICES

I. INTRODUCTION

The City of San Jose is seeking firms or individuals to provide job order contracting (JOC) consultant services to the City of San Jose.

The selection of a consultant to provide the desired services will occur consistent with the requirements of the Qualifications Based Consultant Selection policy adopted by the City Council on December 7, 2004.

This Request for Qualification (RFQ) identifies the general scope and procedures for consultant involvement in this process. Responding Consultants shall have relevant experience and the ability to provide job order contracting services.

The City recently completed a JOC pilot program. The City completed a JOC pilot program with assistance from the consultant The Gordian Group over a four-year period. The JOC contractor was awarded the JOC construction contract based on the lowest adjustment factor to prices in the construction pricing book created by The Gordian Group. The JOC construction contract term was for a period of one year with two one-year options for a total amount of six million dollars. Individual JOC construction projects were authorized by the Director of Public Works with issuance of a Job Order. The City completed a variety of construction projects using the JOC pilot program including a major demolition project, site work projects mainly involving asphalt and concrete, installation of fire sprinklers, and the construction of a dirt BMX park.

The City intends to enter into a new Master Agreement for JOC Consultant services with the top-rated consultant in an amount up to and not to exceed \$100,000 for the entire term of approximately four years to perform a variety of tasks related to implementing JOC. The City reserves the right to extend the term of the agreement and augment the amount of the agreement of the selected firm. Consultant selection for work is not a guarantee that an agreement will be awarded. Each request for work will be authorized by a separate Service Order indicating the service and the tasks to be performed. The general tasks to be performed will be listed in the Master Agreement for Consultant Services. The specific tasks to be performed under the Service Orders will vary.

II. TYPICAL CONSULTANT SCOPE OF SERVICES

Typical Consultant services include the following:

- Provide a construction pricing book, whether in hard copy or electronic form, with updates
The Consultant would be expected to provide a construction pricing book, whether in hard copy or electronic form, and any associated documents along with regular pricing updates (collectively "Construction Pricing Book"). The Construction Pricing Book would be composed of prices and descriptions of

construction items and/or tasks. One or more JOC construction contractors would use the Construction Pricing Book to prepare their respective individual project cost proposals, and the City would use it to review those proposals. During the term of the JOC consultant agreement, the consultant would need to update the Construction Pricing Book as necessary to reflect changes in construction costs. The Consultant would also be expected to provide support to the City and JOC construction contractor(s) with regard to interpreting the Construction Pricing Book.

- Providing JOC software and software support
The Consultant would be expected to provide JOC software that would be used by the JOC construction contractor(s) to prepare their respective individual project cost proposals. The City would use the JOC software to review the proposals. Additionally the JOC software would be capable of being used to create and prepare JOC-related forms and reports. The Consultant would be expected to provide software support to both the City and JOC construction contractor(s).
- Providing JOC software training
The Consultant would be expected to provide JOC software training to both City staff and JOC construction contractor(s).

All work performed under a Master Consultant Agreement shall be authorized by a specific Service Order. The specific tasks requested will be authorized through a separate Service Order prepared prior to the start of work, which will also include the time limit within which such services must be completed and the compensation for such services. Consultant shall not perform any services unless authorized by a fully executed Service Order. The City is not obligated to issue any Service Orders under a Master Agreement.

III. CONSULTANT SELECTION POLICY:

In accordance with the Council adopted Qualifications Based Consultant Selection Policy, Screening Panel representatives will apply a scoring matrix based on predetermined evaluating criteria to establish a ranked consultant list best matching the City's needs. The numerically ranked consultant short list based upon the screening qualifications scores are used to determine the candidates that shall be interviewed. For the purpose of this solicitation, the Screening Panel shall determine a short list for interviews based on a maximum of up to four top ranked candidates.

IV. STATEMENT OF QUALIFICATION (SOQ) SUBMITTAL:

- A. Deliverables: Submit six (6) copies of the Statement of Qualifications.
- B. The completed Statement of Qualifications should be delivered via one of the many services available or hand delivered to:

City of San Jose
Attn: Wayne Hoskins
200 E. Santa Clara St., 6th Floor
San Jose, CA 95113-1905

- C. Statements must be received (not postmarked) at the above address no later than May 12, 2009 at 5:00 pm Pacific Standard Time (PST). Identify the submission by including the following information on the outside of the package:

RFQ FOR JOB ORDER CONTRACTING CONSULTANT SERVICES

- D. No oversize pages (larger than 8-1/2 x 11), shall be included in the submittal. Use 12 pt. font size or larger. The submittal content will not exceed six (6) single-sided pages (including cover letter and Consultant Firm Profile), except for forms mentioned in attachment C, D, E. Thus the maximum length of the submittal will be six (6) single-sided pages plus any forms mentioned in attachment C, D, E.
- E. Statement of Qualifications will not be returned. No Statement of Qualification shall be accepted after the above deadline. Facsimile, emailed or electronic format proposals are not acceptable. This RFQ submission does not include provisions for any direct reimbursement of statement preparation costs.
- F. Qualification Information

In order to be considered, all requested qualification information below shall be submitted. All prospective Consultants must complete and submit all qualifications in one complete package. The City will not accept information or documents from parties other than the submitting consultant.

1. Provide a one-page cover letter signed by an authorized representative of the firm to the City of San Jose.
 - a. Include a brief statement acknowledging that the information provided in the SOQ is true, accurate, and represents the most current information available as of the date of this RFQ.
 - b. Attached as Attachment A of the Request for Qualifications is the City's standard form for Master Agreement for Consultant Services. Include a brief statement acknowledging the Consultant's willingness to accept the City's standard agreement for Consultant Services as is without material modification.
 - c. Provide a statement that the firm can, and is willing to obtain the minimum scope and limits of insurance contained in Exhibit E of Attachment A (Standard Form of Master Agreement) of this RFQ.
 - d. Acknowledge and agree to comply with the City's Gift Ordinance (See Attachment F).

2. Attachments: Consultant shall fill out and submit the following attachments:
 - a. Attachment C: Submit if firm is seeking preference under the local and small business criteria.
 - b. Attachment D: Submit to acknowledge that firm can obtain the minimum scope and limits of insurance contained in Exhibit E of Attachment A (Standard Form of Consultant Agreement) of this RFQ.
 - c. Attachment E: Submit to disclose all conflicts of interest.

3. Provide a Consultant Firm Profile responding to each of the items below.
 - a. Name of firm, address, telephone and fax number
 - b. The name of the primary firm contact for this RFQ process along with their contact information including email address.
 - c. Provide the name, title, address, telephone number, and email address of the individual who will negotiate with the City if firm is selected to provide job order consultant services.
 - d. Provide three (3) references including contact name, position, telephone number, and relationship to JOC program (for example, the person who is managing the JOC program, the person who is executing a JOC project or the person who is managing several JOC projects etc.)

The City may contact some or all of the references provided in order to determine the candidate's performance record on services similar to that described in this request. The City reserves the right to contact references other than those provided in the response and to use the information gained from them in the evaluation process.

4. Describe your firm's experience in providing JOC consultant services as described under "Typical Consultant Scope of Services."
5. Describe your firm's ability to provide a Construction Pricing Book that would cover prices for site work (including landscaping) and construction as well as remodeling of one-story buildings.
6. Describe your firm's ability to provide the City and contractors with JOC software whether it involves web access licenses, or software licenses on individual computers, or network licenses. Also describe the major features and capabilities of the JOC software such as the ability for the contractor to prepare individual project cost proposal in an electronic format, ability for City to review contractor's individual project cost proposal, and ability to create and prepare, in electronic format, JOC-related forms which are needed to execute JOC projects. Additionally describe your ability to provide the City and contractors with software support.

7. Describe your firm's ability to provide JOC software training to both City staff and Contractors.
8. Local Business Enterprise: Identify in the form attached (attachment C) if your firm is a local Business Enterprise. The City of San Jose encourages participation of local firms in its projects. By definition, a local firm is one who has a business office within the Santa Clara County limits AND has at least one full time employee at that address.
9. Small Business Enterprise: Identify in the form (attachment C) if your firm is a Small Business Enterprise. The City of San Jose encourages participation of small Business Enterprise. A small Business Enterprise is a Local Business Enterprise that has a total number of employees (regardless of where they are located) of 35 or fewer.

G. Screening Panel Selection Criteria

The information requested within this RFQ will be the basis for scoring by the Screening Panel Board to select a maximum of up to four top ranked firms to be interviewed. The Screening Panel Board will review, evaluate and score the proposal using the following weighted evaluation criteria:

Firm's Experience:	10 points
Construction Pricing Book:	20 points
Training:	20 points
Software:	40 points
Local Business:	5 points
Small Business:	5 points

H. Interview Board Ranking

The four highest ranked consultants will demonstrate their JOC software to an interview board. The interview board will ask questions as needed during the software demonstration. Additionally, the consultants will be interviewed by the interview board with questions that are asked of each of the interviewees along with follow-up questions as needed. Each interview board member will evaluate the consultants using a predetermined rating sheet with a rating basis of 100 points. The rating sheet will be based on the following weighted evaluation criteria:

Experience and expertise of the JOC consultant. This will be evaluated by looking at criteria such as length of time the firm has performed JOC consultant services, the number of JOC programs the consultant has implemented, the size and complexity of the JOC programs in which the firm has provided JOC consulting services, the experience and expertise of the technical staff, training staff, and software support staff:	25 points
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The ease that City staff will have in managing and tracking multiple JOC projects with multiple JOC contractors using the JOC Consultant processes and software: 25 points

The ease and efficiency of implementing the procurement of an individual capital improvement project by City staff and JOC contractor using the JOC Consultant's software and Construction Pricing Book 40 points

Local Business: 5 points

Small Business: 5 points

V. RFQ SCHEDULE

- | | | |
|-----|--|-----------------------|
| A. | Release of RFQ: | April 17, 2009 |
| B. | Deadline for consultants to submit Request for Information (RFI) in writing: | May 1, 2009 |
| C. | Deadline for City to respond to RFI via addenda: | May 5, 2009 |
| D. | Proposals Due: | May 12, 2009 |
| E.. | Short List Notification for Interview: | May 2009 (tentative) |
| F. | Interviews: | June 2009 (tentative) |

VI. GENERAL

- A. Request for Supplemental Information: The City reserves the right to require, from any or all consultant candidates, supplemental information that clarifies the submitted materials.
- B. Questions: All questions regarding this solicitation should be directed to the City Representative listed. Do not attempt to contact City staff, other than the City Representative listed regarding yours, or anyone else's Qualification Statement. All information will be made known only in writing (see Item VI C below). The City Representative is Wayne Hoskins who can be reached by fax at (408) 292 - 6288, or by email at wayne.hoskins@sanjoseca.gov. Notwithstanding the preceding, nothing in this RFQ shall prohibit any member of a prospective Consultant's firm or any persons working for or representing a prospective Consultant from communicating with any person in the City, including, but not limited to, the City Council, regarding an alleged failure of a City employee to follow the procedures or requirements governing the request for qualifications, or any alleged misconduct or impropriety of a City employee related to the request for qualifications.

Addenda and Interpretation: The City shall not be bound by any oral instructions, interpretations or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this RFQ or should there be a need to clarify the RFQ, you may request clarification in writing and deliver the request to:

City of San Jose
Attn: Wayne Hoskins
200 E. Santa Clara St., 6th Floor
San Jose, CA 95113-1905

Or send e-mail to: wayne.hoskins@sanjoseca.gov
Or fax to Wayne Hoskins at (408) 292-6288

- C. The Consultant shall only rely on this Request for Qualification document and any subsequent written supplement issued by the City for preparation of the submittal. Consultants shall not rely on any other written or any oral statements of the City or its officers, directors, employees, or agents.
- D. Incomplete Qualification Statements: Incomplete and/or unsigned submissions will not be considered. However, if a submission is incomplete and if it appears that the omission can be corrected promptly, the affected firm may be contacted and offered the opportunity to complete the statements and provide the required information within a prescribed period of time, which will not be extended. If a firm does not respond within the time stated, the Qualification Statement will not be considered.
- E. Rejection of Submitted Requests for Qualification: Consultant Statement of Qualifications (SOQ) that are not current, accurate, and/or completed accurately to the prescribed format defined shall be considered non-responsive and eliminated from further consideration.
 - 1. The City reserves the right to waive minor irregularities in the SOQ format.
 - 2. The City reserves the sole right to evaluate the consultant candidates' qualifications and reject any or all SOQ.
- F. Selection Process Termination

The City reserves the right to terminate the selection process at any time, without making an award to any or all consultants on the ranked candidate list. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City Manager or City Council must approve the final master agreement with the consultant before any work may start on the project.
- G. Public Nature of Proposal Material

All correspondence with the City including responses to this RFQ will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.). All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret”, or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in the following paragraph.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret”, or “Proprietary”, the City will provide the proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

Do not mark your entire proposal as “Confidential”.

The City will not disclose any part of any proposal before sending the Final Ranking Notice, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After sending the Final Ranking Notice, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark the proposal – when you submit it – as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

VII. QUALIFICATION STATEMENT REVIEW

The City will rate prospective Consultants/Firms for this work using only objective criteria based upon the information obtained from the Qualification Statements. The City reserves the right to verify from other available sources the information provided by the Consultant and to rely upon such information gathered during the verification process. The City shall review each SOQ and establish a numeric score based upon written evaluation criteria. Consideration of prospective Consultant’s qualifications will be made only if the prospective Consultant meets all the minimum qualifications. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information.

Any Consultant deemed not qualified, or Consultants whose rating changes sufficiently to disqualify them, will be notified in writing. No Consultant shall have the right to an appeal based upon an incomplete or late submission of the qualification statement.

VIII. SELECTED CONSULTANTS

Consultants will be ranked during the interview process. The rankings will be used to select a Consultant for the agreement under this solicitation. Consultant selection for

work is not a guarantee that a project will be awarded. The City's decision will be based on objective evaluation criteria. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information.

An executed Master Agreement for Consultant Service is required prior to the start of work. The City will negotiate the specific scope of services and compensation for such agreement with the highest ranked consultant. If negotiations with the highest ranked consultant are unsuccessful, the City will proceed to negotiate a contract with the next highest ranked consultant. It will continue this process until it reaches an agreement with one of the ranked consultants.

It is anticipated that the City and the selected firm or individuals will execute a master agreement for consultant services up to and not too exceed the amount of \$100,000 for the entire term of approximately four years. The City reserves the right to extend the term of the contract and augment the amount of the contract with the agreement of the selected firm or individual, pending approval by the City Council or by the City of San Jose City Manager.

IX. DISQUALIFICATION

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- A. Evidence of collusion, directly or indirectly, among Consultants in regard to the amount, terms, or conditions of this proposal;
- B. Any attempt to improperly influence any member of the selection staff;
- C. Evidence of incorrect information submitted as part of the SOQ submittal;
- D. Evidence of Consultant's inability to successfully complete the responsibilities and obligations of the SOQ submittal; and
- E. Consultant's default under any agreement, which results in termination of the Agreement.

X. CITY BUSINESS TAX (BUSINESS LICENSE)

Any consultant doing business with the City of San José is required to pay a City of San José business tax. Successful consultant(s) must show proof of the tax being paid or pay the City business tax at time of contract award. Please contact the City's Treasury Division of the Finance Department at (408) 535-7055 to determine applicable costs.

XI. SMALL/LOCAL BUSINESS ENTERPRISE

It is the policy of the City of San José to encourage business activity in San José. Effective June 8, 2004, the City adopted Ordinance 27136, which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, general services and consulting services.

Attachment C, *Request for Contracting Preference for Local and Small Businesses*, is included in this package, and is to be completed and included in RFQ submittals. If you fail to submit the proper information with your Statement, you will be denied consideration for local and small business preference. The information cannot be submitted later.

XII. NON-DISCRIMINATION / PREFERENTIAL TREATMENT

The successful Consultant shall fully comply with Chapter 4.08 of the San José Municipal Code and shall not discriminate against or grant preferential treatment to any subconsultant on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in the Performance of City of San José contracts. Any Consultant who so discriminates or gives preferences shall be deemed not to be a responsible Consultant in accordance with City of San José Charter Section 1217. (See Attachment B).

XIII. EXAMINATION OF PROPOSED MATERIAL

The submission of a proposal shall be deemed a representation and certification by the Consultant that they have investigated all aspects of the RFQ, that they are aware of the applicable facts pertaining to the RFQ process, its procedures and requirements, and that they have read and understood the RFQ. No request for modification of the SOQ shall be considered after it has been submitted on grounds that the Consultant was not fully informed as to any fact or condition.

XIV. PROHIBITION OF GIFTS

City officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the City, or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a Consultant. To avoid even the appearance of impropriety, Consultants should not offer any gifts or souvenirs, even of minimal value, to City officers or employees. The successful Consultant shall be subject to the City Of San José gift prohibition. Said prohibition is found in Chapter 12.08 of the San José Municipal Code (see Attachment F). The successful Consultant agrees not to offer and City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the Agreement by the successful Consultant. In addition to other remedies the City may have by law or equity, City may terminate the Agreement for such breach.

ATTACHMENTS (For reference only, Subject to change without notification.) Be sure to include all attachments.

Attachment A:	Standard Form of Master Agreement
Attachment B:	Nondiscrimination/Nonpreferential Treatment Provisions
Attachment C:	City of San Jose Request for Contracting Preference for Local and Small Businesses
Attachment D:	Insurance Acknowledgement
Attachment E:	Conflict of Interest Form
Attachment F:	Gift Ordinance Policy

ATTACHMENT A: Standard Form of Consultant Agreement

**MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
XXXXXXX
FOR
XXXXXXX**

This AGREEMENT is made and entered into this ____ day of _____ 2008, by and between the City of San José, a municipal corporation (hereinafter "CITY"), and *the Consultant*, a _____ corporation (hereinafter "CONSULTANT"), *authorized to conduct business in the State of California*.

RECITALS

The purpose for which this AGREEMENT is made and all pertinent recitals are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

The CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from date of execution of this AGREEMENT and continue through _____, inclusive, subject to the provisions of Section 12 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The CONSULTANT's services shall be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to the CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed XXXXXXXX DOLLARS (\$XXXXXXX). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the services formed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. Such statement shall be sent to the following address:

XXXXXXX
XXXXXXX
XXXXXXX

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that the CONSULTANT, in the performance of the work and services agreed to be performed by the CONSULTANT, shall act as and be an independent contractor and not an agent or employee of the CITY; and as an independent contractor, the CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to the CITY's employees, and the CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of the CONSULTANT are material considerations for this AGREEMENT. The CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of the CONSULTANT's obligations hereunder, without the prior written consent of the CITY. Any attempt by the CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. SUBCONSULTANTS.

- A. Notwithstanding Section 7 above, the CONSULTANT may use subconsultants in performing the services under this AGREEMENT upon prior written approval by the CITY's Director of Public Works ("Director") or the Director's authorized designee.
- B. The CONSULTANT shall be responsible for directing the services of the approved subconsultants and for payment of any compensation due. The CITY assumes no responsibility whatsoever concerning subconsultant compensation.
- C. The CONSULTANT shall change or add subconsultants only with the prior written approval of the CITY's Public Works Director or the Director's authorized designee.

SECTION 9 INDEMNIFICATION.

The CONSULTANT shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from services performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by the CONSULTANT's officers, employees or agents. The acceptance of said services and duties by the CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

The CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The CONSULTANT agrees to provide the CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

The CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 12. TERMINATION.

- A. The CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.
- B. If the CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, the CITY may terminate this AGREEMENT immediately upon written notice.
- C. The CITY's Director of Public Works is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. In the event of termination, the CONSULTANT shall deliver to the CITY copies of all reports, documents, and other work performed by the CONSULTANT under this AGREEMENT, and upon receipt thereof, The CITY shall pay the CONSULTANT for services performed and other reimbursable expenses incurred to the date of termination.

SECTION 13. GOVERNING LAW.

The CITY and the CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 14. COMPLIANCE WITH LAWS.

The CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for the CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the CITY or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All reports, documents, electronic equivalents or other materials developed or discovered by the CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of the CITY without restriction or limitation upon their use.

SECTION 17. WAIVER.

The CONSULTANT agrees that waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the CITY of the performance of any work or services by the CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. THE CONSULTANT'S BOOKS AND RECORDS.

- A. The CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services,

or expenditures and disbursements charged to the CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to the CONSULTANT pursuant to this AGREEMENT.

- B. The CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, the City Auditor, the City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at the City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of the CONSULTANT's business, the CITY may, by written request by any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained in the City Hall. Access to such records and documents shall be granted to any party authorized by the CONSULTANT, the CONSULTANT's representatives, or the CONSULTANT's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

The CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 20. GIFTS.

- A. The CONSULTANT is familiar with the CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. The CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the CONSULTANT. In addition to any other remedies the CITY may have in law or equity, the CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

The CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of the CITY in matters that are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). The CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of the CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. **NOTICES.**

All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To The CITY:

XXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
Attn: XXXXXXXXXXXX

To The CONSULTANT:

XXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
Attn: XXXXXXXXXXXX

All notices of a legal nature including any claims against the CITY, its officers, or employees shall also be served in the manner specified above to the following address:

A notice shall be deemed effective on the date of personal delivery by or, if mailed, three (3) days after deposit in the mail.

SECTION 25. **VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 26. **PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 27. **SEVERABILITY.**

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

Senior Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk
200 E. Santa Clara St., 2nd Floor Wing
San José, CA 95113-1905

“CONSULTANT”

By _____
Corporate officer, partner, or sole proprietor

Company address
Employer I.D.

EXHIBIT A

RECITALS

END OF EXHIBIT A

EXHIBIT B
SCOPE OF SERVICES

SECTION 1. GENERAL PROVISIONS

SECTION 2. BASIC SERVICES.

SECTION 3. SPECIFIC SERVICES.

END OF EXHIBIT

EXHIBIT C

SCHEDULE OF PERFORMANCE

All work under this AGREEMENT shall be completed on or before _____. Work shall be initiated on an as-needed basis at the request of CITY, and work shall be prosecuted pursuant to details defined in each specific Service Order, as set forth in EXHIBIT B of this AGREEMENT.

At the discretion of CITY, the term and of this AGREEMENT may be extended up to six months in order to complete specific project work that is authorized by Service Order prior to _____. Extension of the term and of the AGREEMENT shall be accomplished only by written authorization of the Director of Public Works or the Director's designee, and only in the event that no other provision of this AGREEMENT is modified.

END OF EXHIBIT

EXHIBIT D

COMPENSATION

Section 1. Maximum Compensation for Master Agreement.

Maximum Amount: The maximum amount of compensation the CITY will pay to the CONSULTANT under this Master Agreement, including both payment for professional services and reimbursable expenses, shall not exceed XXXXXXXX DOLLARS (\$XXXXXXX). Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

Manner of Payment: Each Service Order will set forth whether the CITY will pay the CONSULTANT for work performed under such Service Order on a lump sum basis or on an hourly basis. Section 2 of this Exhibit applies to each Service Order where the CITY will pay the CONSULTANT a lump sum for the work performed. Section 3 of this Exhibit applies to all Service Orders where the CITY will pay the CONSULTANT on an hourly basis for the work performed.

Section 2. Lump Sum Payment.

2.1 Lump Sum Amount: The Service Order shall specify the lump sum amount the CITY will pay the CONSULTANT for performing the required work. The lump sum amount compensates the CONSULTANT for all its costs necessary to complete the work, including professional services and reimbursable expenses. CONSULTANT shall complete all work set forth in the Service Order for the lump sum amount.

2.2 Progress Payments: The Service Order may provide for the CITY to pay the lump sum amount by making progress payments. Under such circumstances, the Service Order shall specify appropriate milestones and the amount payable upon successful completion of each milestone. Upon completion of a milestone to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the appropriate progress payment. The CITY will make the appropriate progress payment to the CONSULTANT within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

2.3 Lump-Sum Payment: If the Service Order does not provide for the CITY to make progress payments, then the CITY shall make a single, lump-sum payment to the CONSULTANT upon completion of all the work to the Director's satisfaction. Upon completion of the work to the Director's satisfaction, the CONSULTANT shall invoice the CITY for the lump-sum amount. The CITY shall pay the lump-sum amount within thirty (30) days of the Director's approval of the CONSULTANT's invoice.

Section 3. Payment on an Hourly Basis.

Maximum Compensation: The Service Order shall specify the maximum amount of compensation for the work, including both payment for professional services and reimbursable expenses. The CONSULTANT shall complete all work it is required to perform under the Service Order for no more than the specified maximum amount. Any hours worked for which payment would result in a total exceeding this maximum amount shall be at no cost to the CITY.

Budget: If the Service Order itemizes budget amounts for any phase or category of work, then CONSULTANT shall not exceed such itemized amount without the Director's prior written authorization. The Director may approve, in writing, transfers of budget amounts between any of the phases or categories of work listed in the Service Order, provided the aggregate total compensation does not exceed the maximum compensation.

Hourly Rates: CITY will compensate CONSULTANT at the hourly rates in Exhibit D-1 of this Master Agreement. Notwithstanding anything to the contrary, these hourly rates are valid for the term of this Master Agreement unless changed by written amendment.

Reimbursable Expenses: The CITY will reimburse for expenses subject to the following:

Each Service Order will specify the maximum amount of expenses for which the CITY will reimburse the CONSULTANT. Except as otherwise set forth in the following paragraph, the CITY will reimburse expenses at actual cost plus XX percent (XX%). Any expenses the CONSULTANT incurs beyond the specified amount is at no cost to the CITY.

3.5 Invoice: Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amounts of payments received to date under the Service Order and the balance of maximum compensation for remaining work on the Service Order.

EXHIBIT D-3

SCHEDULE OF CHARGES

STANDARD HOURLY RATES

Employee classification	\$X
Employee classification	\$X
Continue as required...	\$X

END OF EXHIBIT

EXHIBIT E

INSURANCE

CONSULTANT, at CONSULTANT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose -- Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

RD:
insert date

EXHIBIT F
DISCLOSURE STATEMENT

[include, if applicable]

CONSULTANT shall file with City Clerk a disclosure statement (Statement of Economic Interests -- Form 700) which includes disclosure of the following:

1. Schedule A - 1 -- Investments.
2. Schedule A - 2 -- Investments, Income and Assets of Business Entitles/Trusts.
3. Schedule B -- Interests in Real Property.
4. Schedule C -- Income and Business Positions.
5. Schedule D -- Income - Loans.
6. Schedule E -- Income - Gifts.
7. Schedule F -- Income - Gifts; Travel Payments, Advances and Reimbursements.

EXHIBIT F

SPECIAL PROVISIONS

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

The CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the CITY, the CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether the CONSULTANT or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this AGREEMENT and Chapter 4.08 of the Municipal Code.

3. Failure to Comply with Nondiscrimination Provisions.

If the Compliance Officer determines that the CONSULTANT has not complied with the nondiscrimination or nonpreference provisions of this AGREEMENT, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject the CONSULTANT and/or subcontractor to debarment proceedings pursuant to provisions of the San José Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San José Municipal Code and is a misdemeanor.

4. Subconsultants Agreements.

The CONSULTANT shall include provisions 1 through 3, inclusive, in each Subconsultant agreement entered into in furtherance of this AGREEMENT so that such provisions are binding upon each of its Subconsultants.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this AGREEMENT may be waived by the Compliance Officer, if the Compliance Officer determines that the CONSULTANT has its own nondiscrimination requirements or is bound in the performance of this AGREEMENT by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the CONSULTANT or other governmental agency are substantially the same as those imposed by the CITY.

6. Prevailing Wages.

CONSULTANT acknowledges that portions of the services required by this AGREEMENT are a Public Work, subject to the provisions of Section 1771 of the California Labor Code. CONSULTANT shall pay, or cause to be paid, prevailing wages, as set forth in the California Labor Code Section 1770 *et. seq.*, for all labor performed to facilitate the professional services provided under this AGREEMENT, including, but not limited to, inspection, surveying, drilling, trenching, and excavation. CONSULTANT shall include in all agreements for such labor, a requirement that the employer provide all workers with written notice that prevailing wages apply.

CONSULTANT shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages as required by the State prevailing wage law. CONSULTANT shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT under this AGREEMENT. CONSULTANT shall provide to the CITY, at no cost to the CITY, a copy of all such records within ten (10) working days of a request for such records by the CITY's Office of Equality Assurance.

CONSULTANT expressly agrees that the compensation agreed to between the parties includes all payment necessary to meet State prevailing wage law requirements. CONSULTANT shall indemnify the CITY for any claims, costs or expenses which the CITY incurs as a result of CONSULTANT's failure to pay, or cause to be paid, prevailing wages.

END OF EXHIBIT

EXHIBIT G

City of San José – Dept of Public Works

SERVICE ORDER # _____ - Consultant Services Master Agreement

CONSULTANT MASTER AGREEMENT

AC# _____

Approval: City Manager ☐ City Council ☐ Term: Start _____
Date _____ Date _____ Item No. _____ End _____

Max. Master Agrmt. Comp. \$ _____ Previously Encumbered on AC: SO # _____ for \$ _____

Consultant: Firm Name: _____

Address: _____

Contact: _____ Phone: _____

PROJECT DESCRIPTION

Project Name: _____

Description: _____

Attachment A: Includes Description of Project, Scope of Services, Schedule of Performance and Compensation

CITY PROJECT MANAGEMENT

Managing Division: City Facilities Architectural Services Project Manager: _____

> Division Manager: Katherine Jensen Date: _____

FISCAL/BUDGET

ENCUMBER: Fund: _____ Appn: _____ RC: _____ Current unencumbered amount in Master Agreement: \$ _____
Consultant Comp. for S.O. # _____: \$ _____

> Division Analyst: _____ New balance in Master Agreement: \$ _____
Date: _____

APPROVALS

> Consultant: _____ Date: _____
> Deputy City Attorney: _____ Date: _____
> Director of Public Works: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

> Authorized Signature: _____ Date: _____

Progress Payments for Service Order # _____ with consultant

Payment # _____ Total: \$ _____

Previous Payments: \$ _____ Current Payment: \$ _____ Bal. Remaining: \$ _____

ATTACHMENT B

1. Prohibition on Discrimination and Preferential Treatment.

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

3. Failure to Comply With Nondiscrimination Provisions.

If the Compliance Officer determines that the CONSULTANT has not complied with the nondiscrimination or nonpreference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject CONSULTANT and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

4. Subcontracts.

CONSULTANT shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the CONSULTANT has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the CONSULTANT or other governmental agency are substantially the same as those imposed by the CITY.

ATTACHMENT C City of San José

Request for Contracting Preference for Local and Small Businesses

The San José Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San José Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a nonlocal vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional 5% to 10% points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

Type of Procurement	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
Type of Preference	<input type="checkbox"/> Price is Determinative		
	<input checked="" type="checkbox"/> Price is Not Determinative		
Amount of Preference	LBE preference = 2.5% of Cost		LBE preference = 5% of Points
	SBE preference = 2.5% of Cost		SBE preference = 5% of Points

In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.

Business Name			
Business Address			
Telephone No.			
Type of Business	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)

*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE

In order to qualify as an LBE you must provide the following information:

Current San José Business Tax Certificate Number

Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:

**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business –NOT just local employees, or employees working in the office address given above.

Please state the number of employees that your Business has:

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*): ☐ Local Business Enterprise ☐ Small Business Enterprise
I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: _____, California
Date: _____
Signature: _____
Print name: _____

ATTACHMENT D

INSURANCE ACKNOWLEDGEMENT



REVIEW, EXECUTE AND RETURN WITH RFQ SUBMITTALS

It is imperative that you review the City's attached insurance requirements with your insurance agent(s) prior to submitting your quote / bid, as increase in your premium should be considered in your quote / bid.

Your firm may have already done business with the City and have insurance on file. However, it is important that you verify with your Insurance agent(s) that the policy (ies) is/are still in effect and the coverage(s) are the same as in the attached insurance requirements.

If you or your agent has any questions, please contact the Risk Manager's Office at (408) 535-7061.

I have read the above and acknowledge that insurance is required; that I have the necessary coverage; and that these insurance requirements will be made a part of the Consultant Agreement.

DATE: _____

SIGNATURE: _____

NAME: _____
(Type or Print)

COMPANY: _____



ATTACHMENT E
CONFLICT OF INTEREST FORM

To be completed by consultants making proposals.

NAME _____

DATE _____

PROPOSED ASSIGNMENT:

In order for the City to assess whether the personnel proposed to be assigned by the successful Proposer to work on the Proposed Assignment have a conflict of interest, this form must be completed by each person that the Proposer intends to assign.

Questions		Yes (Provide Details)	No
1.	Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?		
2.	Stock and Investments (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment? (c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? (d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? If the answer is yes to any of the above questions, please provide the name of the company and the amount of the stock or investment.		
3.	Employment & Consulting (a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?		



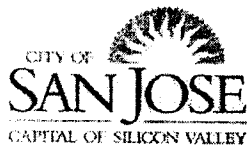
Questions	Yes (Provide Details)	No
(b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? If the answer is yes to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.		



<p>4. Payments or Gifts</p> <p>(d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(e) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the name of the entity, and the title of the position held.</p>		

If during the course of the evaluation, any personal, external, or organizational impairments occur that may affect your ability to do the work and report findings impartially, notify the Program Manager immediately.

Name _____ Date _____ Signature _____ Print _____



ATTACHMENT F

GIFT ORDINANCE

Municipal Code, Chapter 12.08 Prohibition of Gifts

12.08.010 Gifts Prohibited

- A. No officer or designated employee of the City or its Redevelopment Agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this Chapter.
- B. "Person subject to the decision-making or recommending authority" means any individual, firm or entity whose interest or whose employer's or client's interest:
 - 1. Has been materially affected by the work of such officer or employee within the two (2) years prior to the time the gift is given; or
 - 2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

12.08.015 Political Reform Act Requirements

- A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act (California Government Code Section 81000 *et seq.*, as amended) and the requirements in this Chapter.
- B. The gift limitations and disqualification requirements under the Political Reform Act are applicable to gifts which are not prohibited by this Chapter.

12.08.020 Gift Defined

"Gift" means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

- A. As used in this Chapter, the term "gift" includes:
 - 1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.
 - 2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.
 - 3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.
- B. As used in this Chapter, the term "gift" does not include:
 - 1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.
 - 2. Any devise or inheritance.



12.08.030 Gifts Not Prohibited

This Chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

- A. Gifts with a value less than fifty dollars (\$50): Any gift, including meals and beverages provided to an officer or employee in a business or social setting, that has a value less than fifty dollars (\$50), as long as the total value of all such gifts received from any one donor does not exceed fifty dollars (\$50) or more in any calendar year.
- B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.
- C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual's primary residence.
- D. Reciprocal gifts: Presents exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.
- E. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.
- F. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include theatrical productions and art exhibits; political events include political fundraisers.
 - 1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.
 - 2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.
- G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty (150) miles from San José and where the situs of the employment will be at least the same distance from the City.
- H. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve (12) months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.
- I. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the City Council or Redevelopment Agency Board or which is pursuant to a written City or Redevelopment Agency policy for intrastate or interstate travel regardless of the source of payment.
- J. City or Redevelopment Agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the City or Redevelopment Agency, provided that such transportation is related to City or Redevelopment Agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five (125) miles one way. Nothing in this subsection shall be interpreted to limit the City Council's or Redevelopment Agency Board's discretion to approve travel under subsection I. above.



- K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.
- L. Prizes and Awards from Bona Fide Competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974 as amended.
- M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

12.08.040 Acceptance Of Gifts

A gift shall be deemed to have been accepted except where:

- A. It is not used, and, within thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- B. It is treated as and remains the property of the City or the Redevelopment Agency.
- C. It is received by an officer or designated employee in his or her official capacity or as a representative of the City or Redevelopment Agency, is reported to the City Council or Agency Board, and the Council or Board approves the retention.

12.08.050 Reporting Gifts To Domestic Partner, Spouse And Children

- A. At the time of filing the annual disclosure statement required by the Political Reform Act or any applicable conflict-of-interest code, each City and Redevelopment Agency officer and designated employee shall file a family gift report on a form to be provided by the City Clerk.
- B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's domestic partner, spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.
- C. For purposes of this Section, domestic partner shall mean any person registered as a domestic partner by an employee with the City of San José.